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GOVERNOR

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FINANCE AND ADMINISTRATION CABINET
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

██████████, INC.

Contact:

██████████
██████████ LLP

Final Ruling No. 2005-58
October 31, 2005

Use tax assessments
for the periods May 1, 2000 through November 30, 2001

FINAL RULING

The Kentucky Department of Revenue currently has outstanding use tax assessments against ██████████, Inc. ("██████") totaling \$████████, plus interest and amnesty assessment fees for the period May 1, 2000 through November 30, 2001. The following schedule reflects the total underpayment. For the reasons that follow, these assessments are a legitimate tax liability of ████████ to the Commonwealth of Kentucky.

Period	Tax	Interest as of October 31, 2005	Fee	Total
05/01/2000 – 12/31/2000	\$████████	\$████████	\$████████	\$████████
01/01/2001 – 11/31/2001	\$████████	\$████████	\$████████	\$████████
Total	\$████████	\$████████	\$████████	\$████████

██████ produces and sells a complete line of ██████ products, ██████ and ██████ to distributors and retailers for resale. Its manufacturing plant is located in ██████, Kentucky and it operates a distribution facility in ██████, Kentucky.

As part of its business, ██████ purchases ██████ coolers and freezers that are used at customer locations (e.g., schools, hospitals and restaurants) in Kentucky and other states in which ██████ operates. The coolers are used to keep ██████'s products refrigerated and in a condition suitable for sale by those customers. Only ██████ products may be stored in the coolers and the coolers must be surrendered to ██████ once the customer ceases to purchase ██████'s products.

The coolers and freezers for which use tax has been assessed were admittedly used, stored or otherwise consumed in this state. KRS 139.310; 139.190; 139.150. ██████'s sole contention in opposition to the use tax assessments against it is that the coolers were leased or "sold" to its customers in the regular course of business, thereby precluding the application of the use tax. KRS 139.190; 139.150(1); 139.120(1).

It is the Department of Revenue's position that ██████'s arrangements with its customers with respect to the coolers and freezers did not constitute leases or "sales" of those coolers or freezers and that use tax was properly assessed. Any name or label given by a taxpayer to a transaction is not controlling of that transaction's nature or effect under the sales and use tax law. ██████ did not transfer to its customers the right to use, possess and control the coolers nor was consideration given for the coolers, within the meaning of the sales and use tax law. The coolers were not leased, but were instead used to promote or facilitate the sale of its ██████ and other products.

Based upon the foregoing, and after considering the information presented by ██████ in its protest and supporting statement and at the conference held pursuant to KRS 131.110(2) and (3), the use tax assessments totaling \$██████████ (plus applicable interest and fee) are hereby determined by the Department of Revenue to be correct and legitimate liabilities due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

